

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELALTE SIDE

APPEAL FROM ORDER ST.NO.26375 OF 2005
WITH
CIVIL APPLICATION NO.1277 OF 2005

Rameshkumar B.Chopra. ...Appellant.
Vs.
The Municipal Corporation for Gr. Mumbai & Anr. ...Respondents.

....
Mr.B. P. Shukla for the Appellant.
Mrs.Geeta Joglekar for the Respondents.
.....

CORAM : DR. D.Y. CHANDRACHUD, J.

November 21, 2005.

P.C.:

Not on Board. Mentioned. Taken on Board.

The Municipal Corporation has issued a notice under Section 351 of the Mumbai Municipal Corporation Act, 1888 calling upon the Appellant to show cause as to why the construction of a temple structure admeasuring 42' x 15' which is alleged to be unauthorised should not be demolished. After the Appellant submitted a reply, the Assistant Municipal Commissioner passed an order holding that the structure is unauthorised. The Learned Trial Judge in the City Civil Court dismissed the Notice of Motion by

the impugned order dated 1st October 2005. The Learned Trial Judge has noted that the Municipal Corporation issued a stopped work notice when an unauthorised construction of a new structure was found to be in progress. The structure is not assessed. Counsel appearing on behalf of the Appellant submitted that the temple was in existence in 1976 and that it was acquired under an agreement to sell dated 8th September 1980. Now a copy of the agreement to sell which is annexed to these proceedings shows that the Appellant has purported to acquire a structure admeasuring 30' x 20'. The dimension of the structure in the Show Cause Notice under Section 351 are clearly different than those of the structure which was in existence when the structure was purportedly transferred under the agreement to sell. That apart, the agreement to sell does not make any reference to the existence of any temple structure and it is clear that the entire work is carried out without any permission of the Municipal Corporation as the planning authority. In these circumstances, there is no infirmity in the order passed by the Trial Court in dismissing the Notice of Motion. The appeal is accordingly dismissed.

In view of the disposal of the appeal, the Civil Application does not survive and is accordingly disposed of.

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